

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1268X

CHICAGO TERMINAL RAILROAD—ABANDONMENT EXEMPTION—
IN CHICAGO, ILL.

Decided: September 28, 2018

Chicago Terminal Railroad (CTM) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a less than 0.1-mile portion of the “Bloomingdale” line in Chicago, Ill., between N. Elston Avenue and Union Pacific North Avenue Yard (the Line). Notice of the exemption was served and published in the Federal Register on September 5, 2018 (83 Fed. Reg. 45,175). The exemption is scheduled to become effective on October 5, 2018.

The Board’s Office of Environmental Analysis (OEA) served an Environmental Assessment (EA) on September 10, 2018, recommending that one condition be imposed on any decision granting abandonment authority. In the EA, OEA indicated that CTM served a historic report on the Illinois Historic Preservation Agency (SHPO) pursuant to 49 C.F.R. § 1105.8(c), and noted that because the SHPO had not yet commented, OEA had not been able to consider the SHPO’s opinion in determining the impact of the proposed abandonment on historic resources. Accordingly, OEA recommended a condition requiring the railroad to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. The recommended condition would require CTM to report back to OEA regarding any consultations with the SHPO and the public and would prohibit CTM from filing its consummation notice or initiating any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

OEA issued its final EA on September 27, 2018, noting that no new comments to the EA were received by the September 25, 2018 due date and recommending again that the one previously recommended condition be imposed. Accordingly, based on OEA’s recommendation, the historic preservation condition will be imposed.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following the abandonment and salvage of the Line. On September 14, 2018, the City of Chicago (City), filed a request for issuance of notice of interim trail use or abandonment (NITU) under the National Trails Systems Act (Trails Act), 16 U.S.C. § 1247(d). The City has also

submitted a statement of willingness to assume financial responsibility for the right-of-way and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. In a response filed on September 26, 2018, CTM notified the Board that it is willing to negotiate an agreement for interim trail use with the City.

Because the City's request complies with the requirements of 49 C.F.R. § 1152.29 and CTM is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, CTM may fully abandon the Line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

This decision, and the proposed abandonment if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served on and published in the Federal Register on September 5, 2018, exempting the abandonment of the Line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the City to negotiate with CTM for trail use for the Line for a period of 180 days from the service date of this decision and notice, until March 27, 2019. The abandonment is also subject to the condition that CTM shall retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed. CTM shall report back to the Office of Environmental Analysis (OEA) regarding any consultations with the Illinois Historic Preservation Agency (SHPO) and the public. CTM may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.
3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

4. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 3 above.

5. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).

6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by March 27, 2019, for the portion of the right-of-way subject to the NITU, interim trail use may be implemented. If no agreement is reached, CTM may fully abandon the Line, subject to any outstanding conditions imposed above.

8. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.